



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 280**

October 21, 2009 – Offered by Representatives VAN AKKEREN and BIES.

1 **AN ACT** *to repeal* 973.075 (1) (b) 2m. c.; *to renumber and amend* 961.55 (1) (d)
2 4. and 973.075 (4); *to amend* 961.55 (1) (d) (intro.), 961.55 (1) (d) 3., 961.55 (3)
3 (intro.), 961.55 (5) (intro.), 968.20 (1) (intro.), 968.20 (3) (a), 968.20 (3) (b),
4 973.075 (1) (b) 1m. (intro.), 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm),
5 973.075 (1) (d), 973.075 (1) (e) and 973.075 (5) (intro.); and *to create* 961.55 (1)
6 (h), 961.55 (5b), 961.55 (5r), 973.075 (1) (f), 973.075 (1p), 973.075 (4) (a) 1. and
7 2. and 973.075 (5r) of the statutes; **relating to:** seizure of a computer used to
8 commit a felony and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 **SECTION 1.** 961.55 (1) (d) (intro.) of the statutes is amended to read:
10 961.55 (1) (d) (intro.) All Subject to sub. (1p), all vehicles which are used, or
11 intended for use, to transport, or in any manner to facilitate the transportation, for
12 the purpose of sale or receipt of property described in pars. (a) and (b) or for the

1 purpose of transporting any property or weapon used or to be used or received in the
2 commission of any felony under this chapter, but:

3 **SECTION 2.** 961.55 (1) (d) 3. of the statutes is amended to read:

4 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
5 (3g) (b) to (g); ~~and.~~

6 **SECTION 3.** 961.55 (1) (d) 4. of the statutes is renumbered 961.55 (1p) and
7 amended to read:

8 961.55 (1p) If forfeiture of ~~a vehicle~~ property described in sub. (1) (d) or (h) that
9 is encumbered by a bona fide perfected security interest occurs, the holder of the
10 security interest shall be paid from the proceeds of the forfeiture if the security
11 interest was perfected prior to the date of the commission of the felony which forms
12 the basis for the forfeiture and he or she neither had knowledge of nor consented to
13 the act or omission.

14 **SECTION 4.** 961.55 (1) (h) of the statutes is created to read:

15 961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),
16 used in the commission of a felony under this chapter if the following conditions are
17 met:

18 1. If the computer is owned by an individual, the individual had knowledge of
19 and consented to the use of the computer in the commission of the felony.

20 2. If the computer is owned by an entity, all owners of the entity had knowledge
21 of and consented to the use of the computer in the commission of the felony.

22 **SECTION 5.** 961.55 (3) (intro.) of the statutes is amended to read:

23 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
24 (4) shall be instituted promptly. All dispositions and forfeitures under this section
25 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent

1 persons under ~~sub. subs.~~ (1) (d) 1., and 2. and 4. ~~Any (1p).~~ Subject to sub. (5r) (a).
2 any property seized but not forfeited shall be returned to its rightful owner. Any
3 person claiming the right to possession of property seized may apply for its return
4 to the circuit court for the county in which the property was seized. The court shall
5 order such notice as it deems adequate to be given the district attorney and all
6 persons who have or may have an interest in the property and shall hold a hearing
7 to hear all claims to its true ownership. If the right to possession is proved to the
8 court's satisfaction, it shall order the property returned, subject to sub. (5r) (a), if:

9 **SECTION 6.** 961.55 (5) (intro.) of the statutes is amended to read:

10 961.55 (5) (intro.) When property other than a computer is forfeited under this
11 chapter, the agency whose officer or employee seized the property shall do one of the
12 following:

13 **SECTION 7.** 961.55 (5b) of the statutes is created to read:

14 961.55 (5b) If a computer described in sub. (1) (h) is forfeited, the agency whose
15 officer or employee seized the property shall, subject to sub. (5r), do one of the
16 following:

17 (a) If the computer is one described in sub. (1p), sell that which is not required
18 to be destroyed by law and which is not harmful to the public. If, after the conditions
19 of sub. (1p) are satisfied, proceeds remain, the agency may use 50 percent of the
20 remainder for payment of forfeiture expenses. Then, any remainder shall be
21 deposited in the school fund as proceeds of the forfeiture. In this paragraph,
22 "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and
23 sale, including expenses of seizure, maintenance of custody, advertising, and court
24 costs and the costs of investigation and prosecution reasonably incurred.

1 (b) If the computer is not one described in sub. (1p), retain it for the agency's
2 use or donate it to a nonprofit organization or a unit of state or local government.

3 **SECTION 8.** 961.55 (5r) of the statutes is created to read:

4 961.55 (5r) (a) Before selling, donating, or retaining a forfeited computer
5 described in sub. (1) (h) or before returning it to its rightful owner, the law
6 enforcement agency that seized it shall purge all data from the computer that are or
7 represent contraband or that were used in the commission of a crime and all
8 programs that are maintained or designed primarily to facilitate the commission of
9 a crime.

10 (b) Before selling, donating, or retaining a forfeited computer described in sub.
11 (1) (h) and after purging all data as required under par. (a), the law enforcement
12 agency that seized it shall provide the owner an opportunity to retrieve from the
13 computer any remaining data or programs and shall purge all other data or programs
14 except the computer's operating system.

15 **SECTION 9.** 968.20 (1) (intro.) of the statutes is amended to read:

16 968.20 (1) (intro.) Any person claiming the right to possession of property
17 seized pursuant to a search warrant or seized without a search warrant may apply
18 for its return to the circuit court for the county in which the property was seized or
19 where the search warrant was returned. The court shall order such notice as it
20 deems adequate to be given the district attorney and all persons who have or may
21 have an interest in the property and shall hold a hearing to hear all claims to its true
22 ownership. If the right to possession is proved to the court's satisfaction, it shall
23 order the property, other than contraband or property covered under sub. (1m) or (1r)
24 or s. 173.12, 173.21 (4), or 968.205, returned, subject to ss. 961.55 (5r) (a) and 973.075
25 (5r) (a), if:

1 **SECTION 10.** 968.20 (3) (a) of the statutes is amended to read:

2 **968.20 (3) (a)** First class cities shall dispose of dangerous weapons or
3 ammunition seized 12 months after taking possession of them if the owner,
4 authorized under sub. (1m), has not requested their return and if the dangerous
5 weapon or ammunition is not required for evidence or use in further investigation
6 and has not been disposed of pursuant to a court order at the completion of a criminal
7 action or proceeding. Disposition procedures shall be established by ordinance or
8 resolution and may include provisions authorizing an attempt to return to the
9 rightful owner any dangerous weapons or ammunition which appear to be stolen or
10 are reported stolen. If enacted, any such provision shall include a presumption that
11 if the dangerous weapons or ammunition appear to be or are reported stolen an
12 attempt will be made to return the dangerous weapons or ammunition to the
13 authorized rightful owner. If the return of a seized dangerous weapon other than a
14 firearm is not requested by its rightful owner under sub. (1) and is not returned by
15 the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,
16 if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor
17 vehicle following the procedure under s. 973.075 (4) (b) or authorize a law
18 enforcement agency to retain and use the motor vehicle. If the return of a seized
19 firearm or ammunition is not requested by its authorized rightful owner under sub.
20 (1) and is not returned by the officer under sub. (2), the seized firearm or ammunition
21 shall be shipped to and become property of the state crime laboratories. A person
22 designated by the department of justice may destroy any material for which the
23 laboratory has no use or arrange for the exchange of material with other public
24 agencies. In lieu of destruction, shoulder weapons for which the laboratories have

1 no use shall be turned over to the department of natural resources for sale and
2 distribution of proceeds under s. 29.934 or for use under s. 29.938.

3 **SECTION 11.** 968.20 (3) (b) of the statutes is amended to read:

4 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
5 town or county or other custodian of a seized dangerous weapon or ammunition, if
6 the dangerous weapon or ammunition is not required for evidence or use in further
7 investigation and has not been disposed of pursuant to a court order at the
8 completion of a criminal action or proceeding, shall make reasonable efforts to notify
9 all persons who have or may have an authorized rightful interest in the dangerous
10 weapon or ammunition of the application requirements under sub. (1). If, within 30
11 days after the notice, an application under sub. (1) is not made and the seized
12 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
13 city, village, town or county or other custodian may retain the dangerous weapon or
14 ammunition and authorize its use by a law enforcement agency, except that a
15 dangerous weapon used in the commission of a homicide or a handgun, as defined
16 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm
17 is not so retained, the city, village, town or county or other custodian shall safely
18 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as
19 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.
20 973.075 (4) (b). If a firearm or ammunition is not so retained, the city, village, town
21 or county or other custodian shall ship it to the state crime laboratories and it is then
22 the property of the laboratories. A person designated by the department of justice
23 may destroy any material for which the laboratories have no use or arrange for the
24 exchange of material with other public agencies. In lieu of destruction, shoulder
25 weapons for which the laboratory has no use shall be turned over to the department

1 of natural resources for sale and distribution of proceeds under s. 29.934 or for use
2 under s. 29.938.

3 **SECTION 12.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

4 973.075 (1) (b) 1m. (intro.) ~~Except~~ Subject to sub. (1p) and except as provided
5 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
6 following ways:

7 **SECTION 13.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

8 **SECTION 14.** 973.075 (1) (bg) of the statutes is amended to read:

9 973.075 (1) (bg) ~~Any~~ Subject to sub. (1p), any property used or to be used in the
10 commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is encumbered~~
11 ~~by a bona fide perfected security interest that was perfected before the date of the~~
12 ~~commission of the current violation and the holder of the security interest neither~~
13 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
14 ~~security interest shall be paid from the proceeds of the forfeiture.~~

15 **SECTION 15.** 973.075 (1) (bj) of the statutes is amended to read:

16 973.075 (1) (bj) ~~Any~~ Subject to sub. (1p), any property used or to be used in the
17 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~
18 ~~fide perfected security interest that was perfected before the date of the commission~~
19 ~~of the current violation and the holder of the security interest neither had knowledge~~
20 ~~of nor consented to the commission of that violation, the holder of the security~~
21 ~~interest shall be paid from the proceeds of the forfeiture.~~

22 **SECTION 16.** 973.075 (1) (bm) of the statutes is amended to read:

23 973.075 (1) (bm) ~~Any~~ Subject to sub. (1p), any property used in the commission
24 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
25 940.32, ~~but if the property is encumbered by a bonafide perfected security interest~~

1 that was perfected before the date of the commission of the current violation and the
2 holder of the security interest neither had knowledge of nor consented to the
3 commission of that violation, the holder of the security interest shall be paid from the
4 proceeds of the forfeiture.

5 **SECTION 17.** 973.075 (1) (d) of the statutes is amended to read:

6 973.075 (1) (d) ~~A~~ Subject to sub. (1p), a tank vessel that violates s. 299.62 (2)
7 that is owned by a person who, within 5 years before the commission of the current
8 violation, was previously convicted of violating s. 299.62 (2), ~~but if the tank vessel is~~
9 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
10 ~~date of the commission of the current violation and the holder of the security interest~~
11 ~~neither had knowledge of nor consented to the commission of that violation, the~~
12 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

13 **SECTION 18.** 973.075 (1) (e) of the statutes is amended to read:

14 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
15 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
16 943.207 to 943.209 or s. 943.49 and, subject to sub. (1p), any electronic, mechanical
17 or other device for making a recording or for manufacturing, reproducing, packaging
18 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
19 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
20 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~
21 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~
22 ~~date of the commission of the current violation and the holder of the security interest~~
23 ~~neither had knowledge of nor consented to the commission of that violation, the~~
24 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

25 **SECTION 19.** 973.075 (1) (f) of the statutes is created to read:

1 973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)
2 (am), used in the commission of a felony under this chapter if the following conditions
3 are met:

4 1. If the computer is owned by an individual, the individual had knowledge of
5 and consented to the use of the computer in the commission of the felony.

6 2. If the computer is owned by an entity, all owners of the entity had knowledge
7 of and consented to the use of the computer in the commission of the felony.

8 **SECTION 20.** 973.075 (1p) of the statutes is created to read:

9 973.075 (1p) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
10 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
11 was perfected before the date of the commission of the current violation and the
12 holder of the security interest neither had knowledge of nor consented to the
13 commission of that violation, the holder of the security interest shall be paid from the
14 proceeds of the forfeiture.

15 **SECTION 21.** 973.075 (4) of the statutes is renumbered 973.075 (4) (a) 3. and
16 amended to read:

17 973.075 (4) (a) 3. When property, other than property specified in subd. 1. or
18 2., is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell
19 the property that is not required by unless the law requires it to be destroyed or
20 transferred to another agency. The agency may retain any vehicle for official use or
21 sell the vehicle. The

22 (b) When an agency seizing the sells property under par. (a), it shall satisfy the
23 conditions of sub. (1p). If proceeds remain, it may deduct 50% of the amount received
24 for administrative expenses of seizure, maintenance of custody, advertising and
25 court costs and the costs of investigation and prosecution reasonably incurred. The

1 Then, any remainder shall be deposited in the school fund as the proceeds of the
2 forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the
3 money shall be deposited in the school fund.

4 **SECTION 22.** 973.075 (4) (a) 1. and 2. of the statutes are created to read:

5 973.075 **(4)** (a) 1. Subject to sub. (5r), when a computer is forfeited under sub.
6 (1) (f), the agency seizing it shall sell it if sub. (1p) applies but may otherwise retain
7 it for its own use or donate it to a nonprofit organization or a unit of state or local
8 government.

9 2. If a vehicle is forfeited under ss. 973.075 to 973.077, the agency may retain
10 it for official use or sell it.

11 **SECTION 23.** 973.075 (5) (intro.) of the statutes is amended to read:

12 973.075 **(5)** (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
13 with due provision for the rights of innocent persons under ~~sub. subs.~~ (1) (b) 2m., ~~(bg)~~,
14 ~~(bm)~~, ~~(d)~~ and ~~(e)~~ (1p). Except as provided in sub. (5m) and subject to sub. (5r) (a), any
15 property seized but not forfeited shall be returned to its rightful owner. Any person
16 claiming the right to possession of property seized may apply for its return to the
17 circuit court for the county in which the property was seized. The court shall order
18 such notice as it deems adequate to be given the district attorney and all persons who
19 have or may have an interest in the property and shall hold a hearing to hear all
20 claims to its true ownership. If the right to possession is proved to the court's
21 satisfaction, it shall order the property returned, subject to sub. (5r) (a), if:

22 **SECTION 24.** 973.075 (5r) of the statutes is created to read:

23 973.075 **(5r)** (a) Before selling, donating, or retaining a forfeited computer
24 described in sub. (1) (f) or before returning it to its rightful owner, the law
25 enforcement agency that seized it shall purge all data from the computer that are or

1 represent contraband or that were used in the commission of a crime and all
2 programs that are maintained or designed primarily to facilitate the commission of
3 a crime.

4 (b) Before selling, donating, or retaining a forfeited computer described in sub.
5 (1) (f) and after purging all data as required under par. (a), the law enforcement
6 agency that seized it shall provide the owner an opportunity to retrieve from the
7 computer any remaining data or programs and shall purge all other data or programs
8 except the computer's operating system.

9 **SECTION 25. Initial applicability.**

10 (1) This act first applies to crimes committed on the effective date of this
11 subsection.

12

(END)